



2025:KER:72628

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

MONDAY, THE 6TH DAY OF OCTOBER 2025 / 14TH ASWINA, 1947MAT.APPEAL NO. 596 OF 2019AGAINST THE JUDGMENT DATED 25.05.2019 IN OP NO.1024 OF
2014 OF FAMILY COURT, KOTTAYAMAPPELLANT/RESPONDENT IN O.P.:

[REDACTED]

BY ADVS.
SHRI.D.G.VIPIN
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRYRESPONDENT/PETITIONER IN O.P.:

[REDACTED]

BY ADVS.
SRI.ABRAHAM GEORGE JACOB
SHRI.JIBU P THOMAS
SHRI.C.MURALIKRISHNAN (PAYYANUR)THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
24.09.2025, ALONG WITH RPF.C.149/2023, 384/2019, THE COURT ON
06.10.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

MONDAY, THE 6TH DAY OF OCTOBER 2025 / 14TH ASWINA, 1947

RPFC NO. 149 OF 2023

AGAINST THE ORDER DATED 25/05/2019 IN MC NO.68 OF 2017 OF
FAMILY COURT, KOTTAYAM

REVISION PETITIONER/RESPONDENT IN M.C.:

VARGHESE P KURIAKOSE
S/O. VARKEY KURIAKOSE, CHAMAPARAMBIL HOUSE,
MALAKUNNAM P.O, KURICHY VILLAGE,
KOTTAYAM TALUK, - 683535.

BY ADV SRI.ABRAHAM GEORGE JACOB

RESPONDENT/PETITIONER:

EMILDA VARGHESE @ RAJINI
D/O LUBIS SEBASTIAN, PULIYATHARAYIL HOUSE,
CHELLANAM P.O, CHELLANAM VILLAGE, KOCHI - 682008.

BY ADVS.

SRI.ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI. RONY JOSE
SHRI.LEO LUKOSE
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY
SHRI.DERICK MATHAI SAJI
SHRI.KARAN SCARIA ABRAHAM

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR HEARING
ON 24.09.2025, ALONG WITH MAT.APPEAL.596/2019 AND CONNECTED
CASES, THE COURT ON 06.10.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

MONDAY, THE 6TH DAY OF OCTOBER 2025 / 14TH ASWINA, 1947

RPFC NO. 384 OF 2019

AGAINST THE ORDER DATED 25.05.2019 IN MC NO.68 OF 2017 OF
FAMILY COURT, KOTTAYAM

REVISION PETITIONER/PETITIONER IN M.C.:

EMILDA VARGHESE @ RAJANI,
AGED 41 YEARS
D/O LUBIS SEBASTIAN, PULIYATHARAYIL HOUSE,
CHELLANAM P.O.,CHELLANAM VILLAGE, KOCHI-682 008.

BY ADVS.
SHRI.D.G.VIPIN
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY

RESPONDENT/RESPONDENT IN M.C.:

VARGHESE.P.KURIAKOSE
AGED 51 YEARS
S/O VARKEY KURIAKOSE, CHAMAPARAMBIL HOUSE,
MALAKUNNAM P.O., KURICHY VILLAGE,
KOTTAYAM TALUK-683 535.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR HEARING
ON 24.09.2025 ALONG WITH MAT.APPEAL NO.596/2019 AND CONNECTED
CASES, THE COURT ON 06.10.2025 DELIVERED THE FOLLOWING:



CR

SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal No.596/2019 &

R.P.(FC)Nos.384/2019, 149/2023

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Dated this the 6th day of October, 2025

JUDGMENT

P.Krishna Kumar, J.

The above appeal and the revision petitions are preferred against the common judgment passed by the Family Court, Kottayam, by which the petition filed by the husband for dissolution of marriage and the case filed by the wife for maintenance were allowed.

2. The wife challenges the judgment, being aggrieved both by the decree of dissolution and by the insufficiency of the maintenance awarded. The husband also challenges that part of the judgment by which he was directed to pay maintenance at the rate of ₹6,000/- per month. For the sake of convenience, the parties will hereinafter be referred to



as they were arrayed in the petition for divorce.

3. The marriage was solemnized on 20.04.2006 under the Christian law. The petitioner-husband contended that on the death of his first wife he was left with two minor children, and since he was employed far away at the US base in Afghanistan, he was compelled to marry the respondent to ensure their care. However, soon after the marriage, it was understood that the respondent was not at all endearing and was neither attending to nor caring for the children or his ailing father. When his father died, the petitioner had to shift his daughter to a hostel because of the continuous harassment by the respondent. As the younger son was with the respondent, she continued to assault and torture him. She portrayed the child as a problematic ward, compelling the teachers to give counselling to him, resulting in grave mental agony to the child and to the petitioner. The respondent even attempted to resort to sorcery on the child to remove him from the house and permitted him to enter the house only through the back door. The respondent further attempted to commit suicide by consuming an excessive number



of tablets, but it was averted by timely medical care. At last, the petitioner was constrained to send the child to his brother in Kuwait. Later, when the petitioner returned home on leave, the respondent picked a quarrel with him and left his company, leaving him in extreme mental agony, harassment and humiliation. These are the circumstances upon which the petitioner seeks a remedy for the dissolution of marriage.

4. The respondent denied all the above allegations and contended that she had attended to the petitioner's father with due diligence and had always taken care of the children with love, care and compassion. She was a loving and devoted wife and the allegations of harassment and ill-treatment are false. It was the petitioner and his son who kept torturing her physically and mentally to such an extent that she had to swallow some tablets at home in a spur of emotion. The respondent had only informed the petitioner about the unhealthy relationship of the daughter and some acts of misdemeanor of the younger son with the intention of correcting him, it is contented.



5. The respondent-wife filed the maintenance case contending that ever since the marriage, the husband did not pay any amount as maintenance to her, whereas she was unable to maintain herself and she required ₹50,000/- per month for managing her affairs. It is alleged that the petitioner, being a Technician in the US military base in Afghanistan, had been receiving a monthly salary of more than ₹2,00,000/-. Thus, she claimed ₹50,000/- as monthly maintenance.

6. The petitioner-husband denied the said allegation and contended that he had been sending ₹10,000/- to ₹15,000/- every month for the household expenses and the maintenance of the wife. The respondent had been engaged in tailoring work and earning more than ₹5,000/- per month. He also alleged that the respondent deserted him without any justification and hence she is not entitled to get any maintenance.

7. Both cases were tried together by the Family Court. The evidence of the petitioner consists of the testimony of



PW1 to PW6 and Ext. A1. The respondent examined herself as RW1 and produced Ext. B1. After analysing the oral and documentary evidence, the trial court concluded that the respondent ill-treated the children, which agonized their father - the petitioner, and hence he is entitled to get divorce. The court also found that the petitioner is bound to pay maintenance at the rate of ₹6,000/- per month, as there were no materials to prove that the wife left the company of the petitioner on her own.

8. We have heard the learned counsel appearing on either side.

9. The main contention raised by the learned counsel appearing for the respondent-wife is that dissolution of marriage under Section 10(1)(x) of the Divorce Act can be granted only if the husband succeeded in proving the element of cruelty in the exact terms of the statute, i.e., when the husband was treated by the wife with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for him to



live with the wife. To substantiate his contention, the learned counsel placed reliance on the decision in **Libin Varghese v. Rajani Anna Mathew** (2022 (5) KLT 448). The learned counsel further submitted that none of the contentions raised by the petitioner would amount to cruelty within the meaning of Section 10(1)(x) of the Act and hence the impugned judgment is liable to be interfered with. He further submitted that the amount of maintenance awarded by the trial Court is too low considering the status and income of the petitioner.

10. On the other hand, the learned counsel appearing for the petitioner contended that the evidence of PW1 to PW6 would clearly prove that the respondent was extremely cruel to the petitioner's children and that she even tried to commit suicide without any cause and that all these acts amount to severe cruelty, as continuing such a relationship would be extremely dangerous to the life of the petitioner. Relying on the decision in **Mohanan v. Thankamani** (1994 (2) KLT 677), the learned counsel further contended that ill-treatment of children would amount to inflicting mental



cruelty on the father and hence that itself is sufficient to attract the statutory provision. Reliance was also placed on **Narendra v. K. Meena** (2016 (5) KHC 180) to contend that the attempt of the wife to separate the husband from his family members also amounts to cruelty.

11. As it was contended by the learned counsel appearing for the respondent that the alleged ill-treatment of the children by the wife would not attract Section 10(1)(x) of the Act, it is necessary to consider the said aspect first. Section 10(1)(x) of the Divorce Act reads as follows:

“10. Grounds for dissolution of marriage.—(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

xx xx xx xx

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.”



This Court in *A: husband v. B: wife* (2010 (4) KLT 434), had the occasion to consider the question whether the term “cruelty” is used with different magnitude in various statutes relating to marriage and divorce. After analysing the analogous provisions in the Hindu Marriage Act and the Dissolution of Muslim Marriages Act, the Division Bench of this Court held that the nature of cruelty which would entitle a spouse to divorce must certainly be identical in all religious faiths, as the law cannot recognize varieties of cruelty based on religion. Merely because different words are used in the respective personal laws, it was held that identical standards of matrimonial cruelty have to be applied by the courts for all citizens irrespective of the words used in the statute. The court held as follows:

“33. All courts called upon to consider the plea for a decree for divorce on the ground of matrimonial cruelty under any of the enactments referred above must reckon the above observations as beacon lights to ascertain the contours of matrimonial cruelty. To live without the threat or risk of matrimonial cruelty must be reckoned as a Constitutional fundamental right guaranteed under Art. 21 of the Constitution. That inalienable human right must ideally be available to all human beings existing on the planet today. More so in a secular socialist Constitutional republic like ours which guarantees the right to life. The right to live without matrimonial cruelty in the domestic environment in a secular republic



cannot obviously depend on the religious moorings of a citizen. After all, religion, more often than not, is not a matter of choice of the citizen. It is a fait accompli with no real option or choice for the individual. It is an accident of birth. If nature or the Intelligent Designer had ordained that you must be born not in this house but in the neighbour's, you would have belonged to another religion. How many citizens in this country have known, studied and understood their own religion? How many have cared to know, study and understand the neighbour's religion? How many have exercised an informed choice about religion? The point is only that liability to suffer matrimonial cruelty in a secular republic cannot at all depend on the religious denomination of the citizen. Notwithstanding the absence of a uniform legislation relating to marriage and matrimonial cruelty despite the mandate/hope of Art. 44, Judges are bound to interpret the concept of matrimonial cruelty in different personal laws in such a manner as to usher in identical standards of matrimonial cruelty for all citizens. It must shock the judicial conscience that a citizen belonging to any religious denomination can/ought to be compelled to endure greater or graver matrimonial cruelty merely on the basis of his religious faith. That would be negation of the right to equality and right to life guaranteed by the Constitution. We discard the theory that the concept of matrimonial cruelty to entitle a spouse to divorce can be dissimilar and different for persons belonging to different religious faiths merely because different words are used in the relevant personal law statutes. The concept of matrimonial cruelty recognised and accepted in Naveen Kohli must inform the Courts while ascertaining contumaciousness in matrimony whatever the religious faith of the parties. Wherever the law offers elbow room to the Courts, they must resort to the exercise of interpretation to navigate the Indian polity to the promised shores under Art. 44 of the Constitution."

One of the seminal principles of interpretation is that statutory provisions should be construed in conformity with



the constitutional scheme and the mandate of equality. Therefore, we do not find any justification in the attempt made by the respondent to attack the impugned judgment on the above ground. Even otherwise, if the wife is guilty of ill-treating the children, certainly it would cause reasonable apprehension in the mind of the husband that it would be harmful or injurious for him to live with her. The expression “harmful or injurious” is not confined to physical acts alone, but equally extends to mental torture.

12. Coming to the facts and evidence, we find no ground to uphold the contentions advanced by the learned counsel appearing for the respondent. The petitioner has proved his allegations not only through his own testimony, but also by examining PW2, his daughter, PW6, the son, and PW3 to PW5, persons who had personal acquaintance with the alleged ill-treatment by the wife. It is relevant to consider the evidence of PW6 carefully. In his chief affidavit he *inter alia* stated as follows:

“ഏകദേശം ഒരു വർഷം കഴിഞ്ഞപ്പോൾ വല്യപ്പൻ മരണപ്പെട്ടു. വല്യപ്പൻ ജീവിച്ചിരുന്ന കാലത്ത് അമ്മ എന്നോടും എന്റെ സഹോദരിയോടും സ്നേഹമായിട്ടാണ് പെരുമാറിയിരുന്നത്, എന്നാൽ



വല്യപ്പന്റെ മരണശേഷം അമ്മയ്ക്ക് ഞങ്ങളോടുള്ള സമീപനം മാറി. ഞങ്ങളോട് അമ്മ സ്നേഹശൂന്യമായും ക്രൂരമായും പെരുമാറാൻ തുടങ്ങി. എന്റെ സാഹോദരി ഹോസ്റ്റലിൽ നിന്നാണ് കൂടുതൽ കാലവും പഠിച്ചത്. വീട്ടിൽ മിക്കവാറും ഞാനും അമ്മയും ജോലിക്കാരിയും മാത്രമായിരുന്നു താമസം. എനിക്ക് നല്ല ഭക്ഷണം ഉണ്ടാക്കി തരാതെയായി, മിക്കവാറും ബ്രഡും കഞ്ഞിയുമാണ് തന്നിരുന്നത്. കൂടാതെ എന്നെ അകാരണമായി വഴക്കുപറയുകയും ക്രൂരമായി ദേഹോപദ്രവം ഏൽപ്പിക്കാനും തുടങ്ങി. ചുരുൾ വടിയും പട്ടിക കഷ്ണവും കർട്ടൻ റോഡും മറ്റും ഉപയോഗിച്ചാണ് മിക്കവാറും എന്നെ അടിച്ചിരുന്നത്. അപ്പൻ അവധിക്ക് വീട്ടിൽ വരുമ്പോൾ അമ്മ നല്ല ഭക്ഷണം ഉണ്ടാക്കുകയും എനോട് സ്നേഹം നടിക്കുകയും ചെയ്തു .

ഞാൻ ആറാം ക്ലാസിൽ പഠിച്ചിരുന്ന സമയം ഒരിക്കൽ എന്റെ സഹോദരി, അവധിക്ക് വീട്ടിൽ വന്നപ്പോൾ എന്റെ പുറത്ത് അമ്മ അടിച്ച പാടുകൾ കണ്ടു, ചേച്ചി. അതിനെപ്പറ്റി അമ്മയോട് ചോദിച്ചത് ഇഷ്ടപ്പെടാതെ അമ്മ ചേച്ചിയോട് വഴക്കുണ്ടാക്കി. ഒരിക്കൽ അമ്മയോടൊപ്പം ചെല്ലാനത് പോയപ്പോൾ ഞാൻ അവിടത്തെ ആൾക്കാരോടൊപ്പം കടൽ കാണാൻ പോയത് ഇഷ്ടപ്പെടാതെ അവരുടെ എല്ലാം മുൻപിൽ ഇട്ട് എന്നെ കുറെ തല്ലി. എന്റെ കാൽ മുറിഞ്ഞു, ഞാൻ ഒൻപതാം ക്ലാസിൽ കയറിയപ്പോൾ മുതൽ സ്കൂളിൽ കൊണ്ടുപോകാൻ ഉച്ചഭക്ഷണം തന്നുവീടാതെയായി. ഒൻപതാം പത്താം ക്ലാസുകളിൽ പഠിക്കുമ്പോൾ ഉച്ചയ്ക്ക് സ്കൂളിൽ നിന്നും ബേക്കറി പലഹാരമാണ് ഞാൻ കഴിച്ചിരുന്നത്. ചെറുപ്പം മുതലേ അമ്മ എന്നെപ്പറ്റി എന്റെ ടീച്ചേഴ്സിനോട് ഇല്ലാത്ത കുറ്റം പറഞ്ഞുകൊടുത്തിരുന്നു. ഞാൻ ഏഴാം ക്ലാസിൽ പഠിക്കുന്ന കാലം തുടങ്ങി ഇങ്ങനെ അമ്മ കുറ്റം പറയുന്നത് കേട്ട് എനിക്ക്. സ്വഭാവ ദുഷ്ടമുണ്ടെന്ന് വിചാരിച്ച് ടീച്ചേഴ്സ് എനിക്ക് നിരന്തരമായി കൗൺസലിങ്ങ് തരാൻ തുടങ്ങി. അത് ടീച്ചേഴ്സിന്റെയും കുട്ടികളുടെയും ഇടയിൽ എനിക്ക് വലിയ അപമാനത്തിനിടയാക്കി. അമ്മയുടെ ശാരീരികമായും മാനസികമായും പീഡനങ്ങൾ എന്റെ പഠനത്തെയും ബാധിച്ചു .

എന്റെ മുടി വെട്ടാൻ വീട്ടിൽ വന്നിരുന്ന ബാർബർ വത്സലനെ കൊണ്ട് എന്റെ ഇഷ്ടത്തിനു വിരുദ്ധമായി എപ്പോഴും എന്റെ മുടി പറ്റു വെട്ടിക്കുന്നത് അമ്മ പതിവാക്കി. അത് എനിക്ക് വലിയ മനഃപ്രയാസം ഉണ്ടാക്കിയിരുന്നു. 2013 ജൂൺ മാസത്തിൽ ചേച്ചിയുടെ കല്യാണത്തിന് മുൻപ് വത്സലൻ മുടി വെട്ടാൻ വന്നപ്പോൾ ചേച്ചിയുടെ കല്യാണമായതിനാൽ മുടി പറ്റു വെട്ടേണ്ട എന്ന് ഞാൻ പറഞ്ഞു. എന്നാൽ കല്യാണം കാര്യമാക്കേണ്ട മുടി പറ്റു വെട്ടണം എന്ന് അമ്മ വത്സലനോട് നിർബന്ധപൂർവ്വം പറഞ്ഞു. എന്നാൽ മുടി വെട്ടാൻ വിസമ്മതിച്ച എന്റെ കാരണത്താൽ അമ്മ അടിക്കുകയും നിർബന്ധിച്ചു, മുടി പറ്റു വെട്ടിക്കുകയും ചെയ്തു, മുടി വെട്ട് കഴിഞ്ഞ് വീട്ടിൽ കയറിയ ശേഷവും, അമ്മ എന്നെ വഴക്കുപറയുന്നത് തുടരുകയും ചേച്ചിയെപ്പറ്റി



മോശമായി സംസാരിക്കുകയും ചെയ്തു, എനിക്ക് സങ്കടവും ദേഷ്യവും സഹിക്കാൻ പറ്റാതെ ഞാൻ അമ്മയോട് ദേഷ്യപ്പെട്ടു, അപ്പോൾ അമ്മ ദേഷ്യപ്പെട്ട് എന്നെ വീണ്ടും അടിക്കാനായി കൈ ഓങ്ങി. അടി തടയുന്നതിനായി ഞാൻ അമ്മയുടെ കയ്യിൽ കയറി പിടിച്ചപ്പോൾ അമ്മ എന്റെ വലതു കൈത്തണ്ടയിൽ കടിച്ച് മുറിവേൽപ്പിച്ചു, അടുത്ത ദിവസം സ്കൂളിൽ പോകുന്ന വഴി ഞാൻ ഞങ്ങളുടെ ബന്ധുവായ സാബു അങ്കിളിന്റെ വീട്ടിൽ ചെല്ലുകയും എന്റെ കൈത്തണ്ടയിലെ മുറിവ് കണ്ട് അങ്കിൾ ചോദിച്ചപ്പോൾ ഉണ്ടായ വിവരം ഞാൻ അങ്കിളിനോട് പറഞ്ഞിട്ടുള്ളതുമാണ്. ടി സമയം എന്നെ സ്കൂളിൽ എപ്പോഴും കൗൺസിലിംഗിന് വിധേയനാക്കാറുണ്ടോ എന്ന് അങ്കിൾ എന്നോട് ചോദിക്കുകയും, അമ്മ നിരന്തരം എന്നെ പറ്റി അനാവശ്യമായി ടീച്ചേഴ്സിനോട് കുറ്റം പറഞ്ഞു കൊടുക്കുന്നതിനാൽ എന്നെ സ്കൂളിൽ നിരന്തരം കൗൺസിലിംഗിന് വിധേയനാക്കുന്ന വിവരം ഞാൻ പറയുകയും ചെയ്തു, സാബു അങ്കിൾ പറഞ്ഞതനുസരിച്ച് ഞാൻ ടീച്ചേഴ്സിനോട് എന്റെ അമ്മ രണ്ടാനമ്മയാണെന്ന് പറയുകയും പിന്നീട് അവർ അമ്മയെ വിളിപ്പിക്കുകയും ഇല്ലാത്ത കാര്യങ്ങൾ ആണ് അമ്മ പറഞ്ഞു കൊടുത്തിരുന്നത് എന്ന് മനസ്സിലാക്കിയ ശേഷം കൗൺസലിങ് നിർത്തുകയും ചെയ്തു.”

It is interesting to note that none of the above aspects were challenged in his cross-examination. Apart from that, his version was clearly corroborated by PW3 and PW4. When the respondent was examined as RW1, though she denied those allegations, we find her *ipse dixit* too insufficient to discard the aforesaid testimonies.

13. We also notice yet another aspect which supports the contention raised by the petitioner. The petitioner contended that the respondent attempted to commit suicide by



consuming an excessive number of pills, but she was saved by immediate medical intervention. In her pleading, she attempted to justify her act by contending that it was because of the ill-treatment of the petitioner and his son that she was forced to do so. However, when she was cross-examined, she took a contention which is entirely contrary to her pleading. She stated that it was because she had a cold she took an excessive number of pills. There is evidence on record that after the said incident she was hospitalized and her stomach was washed. The above aspects probabalise the contention of the petitioner that she attempted to commit suicide without any reasonable cause. It is settled law that making such suicide attempts or threats would amount to cruelty on the spouse.

14. The discussion made above unerringly points to the conclusion that the impugned judgment is not liable to be interfered with to the extent of granting the decree of divorce. However, we find no justification for limiting the quantum of maintenance to ₹6,000/- per month, considering the admitted nature and income of the petitioner's job. In



our estimation, the respondent requires at least ₹15,000/- per month for meeting her needs. While fixing the maintenance, the income and living status of the husband is of relevance. [See *Jasbir Kaur Sehgal v. District Judge, Dehradun and others*, [(1997) 7 SCC 7], *Rakhi Sadhukhan vs. Raja Sadhukhan* (AIR 2025 SC 3268). The evidence on record shows that the petitioner has the means to pay the said amount. Hence, to that extent, the judgment is to be modified.

In the result, Mat.Appeal No.596/2019 and R.P.(FC)No. 149/2023 are dismissed. R.P.(FC)No.384/2019 is partly allowed by enhancing the amount of maintenance to ₹15,000/- per month from the date of the petition.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE